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this Memorandum Decision shall not be
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establishing the defense of res judicata,
collateral estoppel, or the law of the case.

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**IN THE
COURT OF APPEALS OF INDIANA**

DEAN E. BLANCK,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 49A05-0605-PC-247
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark D. Stoner, Judge
Cause No. 49F09-9509-CF-130345

October 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Dean E. Blanck pleaded guilty to Operating While Suspended as an Habitual Traffic Violator, as a Class D felony, and Operating While Intoxicated, as a Class A misdemeanor. The trial court entered judgment of conviction and imposed sentence accordingly. Blanck subsequently petitioned for post-conviction relief to set aside his guilty plea. The trial court denied Blanck's petition without a hearing. Blanck, pro se, appeals and presents a single issue for our review, namely, whether the trial court erred when it denied his petition without a hearing.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 10, 1995, Blanck was driving in Indianapolis when a police officer stopped him for excessive speed. Because of an odor of alcohol about Blanck, the officer performed field sobriety tests, which Blanck failed. Blanck also failed a breathalyzer test and refused a certified chemical blood alcohol test. The officer ran a check on Blanck's license and learned that it was suspended because Blanck was an habitual traffic violator.

The State charged Blanck with operating a vehicle while suspended as an habitual traffic violator, as a Class D felony; operating while intoxicated, as a misdemeanor; and reckless driving, as a misdemeanor. The State later dismissed the third charge. Blanck initially pleaded not guilty. On December 21, 1995, the date set for trial, Blanck was represented by a public defender, Peggy Ryan. On Ryan's advice, Blanck entered into a plea agreement under which he pleaded guilty to operating a vehicle while suspended as

an habitual traffic violator and operating while intoxicated. The trial court entered judgment and imposed sentence as follows:

The court will accept the guilty plea, enter a finding of guilty to the habitual traffic violator suspension charge as a D felony. Sentence you to 545 days, and suspend, accepting the agreement, suspend 180 days of that sentence. So you have 365 days to serve. You get 31 credit days. On the operating while intoxicated charge as an A misdemeanor, enter a judgment as charged to an A misdemeanor with 365 days to serve. And the sentences to be served concurrent. You get 31 days credit on that also. The court will suspend the fines and cost. There is no probation.

Transcript at 17-18.

On March 15, 2006, Blanck filed a petition for post-conviction relief, alleging that (1) his trial counsel was ineffective and (2) his guilty plea was not voluntary because it provided for an illegal sentence. That same day, the trial court issued written findings and conclusions, summarily denying the petition. Blanck appeals only from the denial of his petition as to the ineffective assistance claim.

DISCUSSION AND DECISION

The petitioner bears the burden of establishing his grounds for post-conviction relief by a preponderance of the evidence. Ind. Post-Conviction Rule 1(5). Because the post-conviction court denied relief in the instant case, Blanck appeals from a negative judgment and faces the rigorous burden of showing that the evidence as a whole “‘leads unerringly and unmistakably to a conclusion opposite to that reached by the trial court.’” See Williams v. State, 706 N.E.2d 149, 153 (Ind. 1999) (quoting Weatherford v. State, 619 N.E.2d 915, 917 (Ind. 1993)), cert. denied, 529 U.S. 1113 (2000). It is only where the evidence is without conflict and leads to but one conclusion, and the post-conviction

court has reached the opposite conclusion, that its decision will be disturbed as contrary to law. Bivins v. State, 735 N.E.2d 1116, 1121 (Ind. 2000).

Post-conviction proceedings do not afford petitioners a “super-appeal.” Craig v. State, 804 N.E.2d 170, 172 (Ind. Ct. App. 2004). Instead, post-conviction proceedings are designed to afford petitioners with an opportunity to present issues that were not known at the time of the original trial or were not available on direct appeal. Id. (citing Ben-Yisrayl v. State, 738 N.E.2d 253, 258 (Ind. 2000), cert. denied, 126 S. Ct. 659 (2002)). Here, of course, there was no direct appeal.

On appeal from the denial of his petition for post-conviction relief, Blanck asserts he was denied effective assistance of trial counsel. There is a strong presumption that counsel rendered effective assistance and made all significant decisions in the exercise of reasonable professional judgment, and the burden falls on the defendant to overcome that presumption. Gibson v. State, 709 N.E.2d 11, 13 (Ind. Ct. App. 1999), trans. denied. To make a successful ineffective assistance claim, a defendant must show that: (1) his attorney’s performance fell below an objective standard of reasonableness as determined by prevailing professional norms; and (2) the lack of reasonable representation prejudiced him. Mays v. State, 719 N.E.2d 1263, 1265 (Ind. Ct. App. 1999) (citing Strickland v. Washington, 466 U.S. 668, 687 (1984)), trans. denied. Even if a defendant establishes that his attorney’s acts or omissions were outside the wide range of competent professional assistance, he must also establish that but for counsel’s errors, the result of the proceeding would have been different. Andrews v. State, 588 N.E.2d 1298, 1302 (Ind. Ct. App. 1992). It is not necessary to determine whether counsel’s performance was

deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Law v. State, 797 N.E.2d 1157, 1162 (Ind. Ct. App. 2003).

Here, Blanck contends that his trial counsel was ineffective because she failed to investigate and discover that he was already on probation in another county and, as a result, she negotiated a plea agreement that contained an illegal sentence. In particular, Blanck contends that the trial court's imposition of concurrent sentences for operating while suspended as an habitual traffic violator and operating while intoxicated is contrary to Indiana Code Section 35-50-1-2(d). The State argues that Section 35-50-1-2(d) does not mandate consecutive sentences in this case and, therefore, Blanck has not shown prejudice. We agree with the State.

Indiana Code Section 35-50-1-2 provides, in relevant part:

If, after being arrested for one (1) crime, a person commits another crime: (1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; . . . the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

Ind. Code § 35-50-1-2(d)(1). Applied here, Section 35-50-1-2(d)(1) requires any sentence imposed or reinstated as a result of Blanck's probation violation to be served consecutive to the sentences imposed in the present case. The statute does not require that the sentences imposed in the present case be served consecutively because, in this case, no sentence was reinstated as a result of a probation violation. Thus, Blanck has not

shown that the trial court erred when it sentenced him.¹ Thus, Blanck has failed to show that his trial counsel was ineffective.

In addition, even if the trial court had erred when it imposed concurrent sentences as a result of trial counsel's ineffective assistance, Blanck cannot show that he was prejudiced thereby. The imposition of concurrent sentences resulted in an aggregate sentence of 365 days. The imposition of consecutive sentences would have resulted in an aggregate sentence of 730 days. Blanck cannot show that he was prejudiced by the imposition of a shorter aggregate sentence. Thus, his claim of ineffective assistance is, in any event, without merit.

Blanck's petition for post-conviction relief alleged that his trial counsel was ineffective because she advised him to enter into a plea agreement that contained an illegal sentence. Because we conclude that the sentence was not illegal, Blanck has not shown that his trial counsel was ineffective when she negotiated that sentence. As a result, Blanck's petition for post-conviction relief shows that he is not entitled to relief. Therefore, we hold that the trial court did not abuse its discretion when it summarily denied his petition.

Affirmed.

DARDEN, J., and BAKER, J., concur.

¹ Because we conclude that the trial court did not err when it imposed concurrent sentences in this case, we need not address Blanck's contention that his trial counsel failed to investigate and discover the existence of his probation status in another county.